

Message Text

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11
ACTION EA-09

INFO OCT-01 ISO-00 PM-04 NSC-05 SP-02 SS-15 L-03 H-02

CIAE-00 INR-07 NSAE-00 OMB-01 TRSE-00 ACDA-07 /056 W
----- 093258

R 120124Z AUG 76
FM AMEMBASSY MANILA
TO SECSTATE WASHDC 8760
INFO SECDEF WASHDC
JCS WASHDC
CINCPAC
CINCPACAF
CINCPACFLT
CINCPACREPPHIL SUBIC
CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 1 OF 2 MANILA 12026

CINCPAC ALSO FOR POLAD

FROM USDEL 198

E.O. 11652: GDS
TAGS: MARR, RP
SUBJECT: PHILIPPINE BASE NEGOTIATIONS: TAXATION

REF: A. BAGUIIO
B. STATE 163986
C. MANILA 10276 (USDEL 120)
D. MANILA 10965 (USDEL 156)

1. SUMMARY: UNLIKELY THAT WORKING GROUP WILL MAKE PROGRESS
WITHOUT SUBSTANTIAL CHANGE IN PHIL POSITION. THIS MESSAGE
PROVIDES CURRENT STATUS OF PARAGRAPH 1, 3, AND 5 OF US DRAFT
ARTICLE X INCLUDING UNREPORTED CHANGES. WOULD APPRECIATE
COMMENTS ON ANY MATTERS CONSIDERED OBJECTIONABLE AND ANY
SUGGESTIONS. PARAGRAPHS 2 AND 4 WILL BE REPORTED FOLLOWING
FURTHER EFFORTS TO REFINE EXISTING LANGUAGE. END SUMMARY.

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2. TEXT OF PARAGRAPH 1, ARTICLE X WITH DISAGREEMENT

REFLECT IN PARENTHESES IS AS FOLLOWS:

QUOTE. 1. MATERIALS, EQUIPMENT, SUPPLIES OR GOODS, (US: INCLUDING FOOD AND CLOTHING) IMPORTED BY THE UNITED STATES FORCES (RP: FOR OFFICIAL PURPOSES) WHICH ARE TO BE UTILIZED EXCLUSIVELY FOR THE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE FACILITIES DESIGNATED FOR USE BY THE UNITED STATES, AND WHICH ARE CONSIGNED TO OR DESTINED FOR THE UNITED STATES FORCES (US: OR ITS CONTRACTORS) AND CERTIFIED BY THE UNITED STATES MILITARY AUTHORITIES TO BE FOR SUCH PURPOSES SHALL BE EXEMPT FROM (US: ALL IMPORT, EXCISE, CONSUMPTION, OR OTHER TAXES, DUTIES, IMPOSTS OR OTHER REVENUE PRODUCING CHARGES OF WHATEVER NATURE), (RP: ALL CUSTOMS, DUTIES TAXES AND OTHER CHARGES). PROCEDURES FOR THE IMPLEMENTATION OF THIS PARAGRAPH ARE SET FORTH IN ANNEX -----OF THIS AGREEMENT. (RP: MATERIALS, EQUIPMENT SUPPLIES AND GOODS DESTINED FOR OR CONSIGNED TO CONTRACTORS SHALL BE SUBJECT TO ALL TAXES, DUTIES AND CHARGES EXCEPT FOR CONTRACTORS UNDER LONG-TERM CONTRACT FOR THE MAINTENANCE OF MILITARY AIRCRAFT, VESSELS OR OTHER MILITARY EQUIPMENT FOR WHICH SAID CONTRACTOR WERE AGREED UPON WHEN THE EQUIPMENT WAS ORIGINALLY PURCHASED.) UNQUOTE.

3. FIRST SENTENCE OF THIS PARAGRAPH WAS REPHRASED AT PHIL REQUEST FOR A POSITIVE RATHER THAN NEGATIVE STATEMENT OF EXEMPTION. PHIL REJECTION OF QUOTE INCLUDING FOOD AND CLOTHING UNQUOTE AND THEIR PROPOSAL OF QUOTE FOR OFFICIAL PURPOSES UNQUOTE ARE INTENDED TO PRESERVE PHIL POSITION THAT EXCHANGES, COMMISSARIES, MESSES, ETC. ARE NOT ENTITLED TO ANY TAX EXEMPTIONS INCLUDING THOSE ON IMPORTATION. PHIL REP TOLEDO HAS HINTED THAT RP WILL ULTIMATELY CONCEDE TAX EXEMPTIONS FOR SUCH ACTIVITIES AND AT THAT TIME WILL GIVE IN TO US POSITION ON PARENTHETICAL LANGUAGE QUOTED THIS PARAGRAPH. HOWEVER, CONNECTION PHILS ARE MAKING BETWEEN US DRAFT ARTICLES X AND XIX SUGGESTS WE SHOULD RECONSIDER LANGUAGE PROPOSED IN REF A EXPLICITLY EXTENDING DUTY FREE IMPORTATION TO ARTICLE XIX ACTIVITIES. REF B REJECTED REF A PROPOSAL ON BASIS THAT EXEMPTIONS FOR ARTICLE XIX ACTIVITIES STAND ON THEIR OWN IN THAT ARTICLE AND CROSS REFERENCE WOULD ADVERSELY EFFECT NEGOTIATIONS BY HIGHLIGHTING CONFIDENTIAL

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IN BOTH ARTICLES AN EXEMPTION WHICH PHILIPPINES MIGHT BE RELUCTANT TO ACCEPT. WE BELIEVE ADVERSE EFFECT, IF ANY, WOULD BE MINIMAL AND OUTWEIGHED BY DESIRABILITY OF NAILING DOWN SPECIFIC TAX EXEMPTION ON IMPORTATION FOR ARTICLE XIX ACTIVITIES. REGARDING OF PAST OR CURRENT INTERPRETATIONS, ONCE NEW AGREEMENT INCLUDING ARTICLE ON APPLICATION OF PHILIPPINE LAW ENTERS INTO FORCE, WE CAN EXPECT A STRICT CONSTRUCTION OF ANY LANGUAGE GRANTING EXEMPTIONS OR OTHER

PRIVILEGES. IT IS EASY TO IMAGINE A PHIL CONSTRUCTION OF ARTICLE XIX WHICH WOULD RECOGNIZE THE EXEMPTIONS PROVIDED THEREIN AS APPLYING ONLY TO ESTABLISHMENT OF THE ACTIVITIES AND SALES OF MERCHANDISE TO INDIVIDUALS BUT NOT TO THE ORIGINAL IMPORTATION OF SUCH MERCHANDISE IN SPITE OF EXEMPTION FROM QUOTE DUTIES UNQUOTE. ONCE THE PHIL PANEL ACCEPTS GENERALLY THE TAX EXEMPT STATUS OF ARTICLE XIX ACTIVITIES, WE BELIEVE THEY WOULD ACCEPT LANGUAGE FOR ARTICLE X ALONG THE LINES SET OUT IN REF A WHICH WOULD SPECIFICALLY EXTEND TAX EXEMPTION FOR IMPORTATIONS BY ARTICLE XIX AGENCIES. ARTICLE X REFERENCE TO ARTICLE XIX AGENCIES WOULD ALSO AFFIRM OUR POSITION THAT SUCH AGENCIES FALL WITHIN THE PURVIEW OF QUOTE CONSTRUCTION, MAINTENANCE, OPERATION OR DEFENSE OF THE FACILITIES UNQUOTE. ON BASIS OF FOREGOING, REQUEST RECONSIDERATION OF REF B GUIDANCE.

4. US PROPOSAL REFERS TO EXEMPTION FROM ALL QUOTE IMPORT, EXCISE, CONSUMPTION, OR OTHER TAXES, DUTIES, IMPOSTS OR OTHER REVENUE PRODUCING CHARGES OF WHATEVER NATURE UNQUOTE. DRAWING ON SPANISH PROVISIONS, PHILS PROPOSE EXEMPTION FROM ALL QUOTE CUSTOMS DUTIES, TAXES, AND OTHER CHARGES UNQUOTE. WE WOULD APPRECIATE GUIDANCE ON ACCEPTABILITY OF PHIL WORDING WHICH IS ARGUABLY BROADER THAN OUR OWN.

5. RESPECTIVE PROPOSALS FOR ARTICLE X(3) ARE AS FOLLOWS:
QUOTE: 3. (US: UNITED STATES CONTRACTORS SHALL BE EXEMPT FROM THE PAYMENT OF ANY TAX TO THE PHILIPPINES OR ANY LOCAL AUTHORITIES IN THE PHILIPPINES ON ANY INCOME

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CIAE-00 INR-07 NSAE-00 OMB-01 TRSE-00 ACDA-07 /056 W

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R 120124Z AUG 76

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 8761

INFO .SECDEF WASHDC

JCS WASHDC
CINCPAC
CINCPACAF
CINCPACFLT
RHMOGOAGMCINCPACREPPHIL SUBIC
CG 13TH AF CLARK

C O N F I D E N T I A L SECTION 2 OF 2 MANILA 12026

FROM USDEL 198

CINCPAC ALSO FOR POLAD

DERIVED UNDER A CONTRACT WITH THE UNITED STATES FOR THE BENEFIT OF THE UNITED STATES FORCES, OR ANY OTHER TAX OR LICENSE IN RESPECT TO ANY SERVICE OR WORK FOR THE UNITED STATES FORCES UNDER SUCH A CONTRACT, AND SHALL BE EXEMPT AS WELL FROM ANY REQUIREMENT TO FILE A PHILIPPINE TAX RETURN WITH RESPECT TO SUCH INCOME.) (RP: ALL CONTRACTORS OF THE UNITED STATES, NATURAL OR JURIDICAL, SHALL PAY PHILIPPINE INCOME TAX ON INCOME DERIVED FROM THE PERFORMANCE WITHIN THE PHILIPPINES OF CONTRACTS FOR THE CONSTRUCTION, MAINTENANCE, OPERATION AND DEFENSE OF THE FACILITIES OR ANY OF ITS EQUIPMENT, INSTALLATIONS OR OTHER PROPERTY. HOWEVER, CONTRACTORS UNDER LONG-TERM CONTRACT FOR THE MAINTENANCE OF MILITARY AIRCRAFT, VESSELS OR OTHER MILITARY EQUIPMENT FOR WHICH SAID CONTRACTS WERE AGREED UPON WHEN THE EQUIPMENT WAS ORIGINALLY PURCHASED SHALL NOT BE SUBJECT TO THE TAX MENTIONED IN THE PRECEDING SENTENCE.) UNQUOTE.
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6. WE HAVE REPHRASED US PROPOSAL IN POSITIVE TERMS. PHILS HAVE SHOWN NO FLEXIBILITY IN THEIR POSITION. WE BELIEVE THE ONLY POSSIBILITY FOR MOVEMENT ON THIS PARAGRAPH IS TIED TO THE LOCAL PROCUREMENT ARTICLE AS PROPOSED IN REFS C AND D. WE WOULD APPRECIATE EARLY RESPONSE TO REF D.

7. ARTICLE X(5A) AND (5A(1)) READ AS FOLLOWS:

QUOTE: 5A. THE PERSONS REFERRED TO IN PARAGRAPHS 2 (US: OR 3) OF THIS ARTICLE SHALL BE EXEMPT FROM PAYMENT TO THE PHILIPPINES OR ANY LOCAL AUTHORITIES IN THE PHILIPPINES (US: OF ANY REVENUE PRODUCING CHARGES, POL TAX, RESIDENCE TAX, IMPORT OR EXPORT DUTY, OR ANY TAX) (RP: OF ALL CUSTOMS DUTIES, TAXES AND OTHER CHARGES) ON PERSONAL PROPERTY; (US: PROVIDED THAT PRIVATELY WONED VEHICLES SHALL BE SUBJECT TO PAYMENT OF THE NORMAL LICENSE PLATE AND REGISTRATION FEES.) THE EXEMPTION FROM IMPORT DUTIES REFERRED TO IN THIS

PARAGRAPH SHALL BE AVAILABLE ONLY FOR:

(1) (RP: REASONABLE QUANTITIES OF) PERSONAL BELONGINGS AND HOUSEHOLD EFFECTS (US: INCLUDING MOTOR VEHICLES) (RP: EXCEPT MOTOR VEHICLES, MOTORCYCLES, AIRCRAFT AND WATERCRAFT) PROVIDED THAT SUCH BELONGING OR EFFECTS (US: ACCOMPANY THE PERSON OR ARE IMPORTED WITHIN 180 DAYS AFTER THE FIRST ARRIVAL IN THE PHILIPPINES OF THE PERSON OR OF HIS OR HER DEPENDENTS, IF THEY ARRIVE LATER OR ARE FOR REPLACEMENT OF BELONGINGS OR EFFECTS ORIGINALLY IMPORTED UNDER THE ABOVE STATED CONDITIONS; AND) (RP: ACCOMPANY THE PERSON OR ARE IMPORTED WITHIN 90 DAYS AFTER THE FIRST ARRIVAL IN THE PHILIPPINES OF SUCH PERSON AND PROVIDED FURTHER THAT HOUSEHOLD EFFECTS SUCH AS REFRIGERATORS, FREEZERS, AIR CONDITIONERS, WASHING MACHINES, CLOTHES DRYERS, DISH WASHERS, TAPE RECORDERS, PHONOGRAPHS, WATER HEATERS AND SEWING MACHINES SHALL BE LIMITED TO TWO (2) OF EACH ITEM. ANY EXCESS SHALL BE SUBJECT TO CORRESPONDING CUSTOMS DUTIES AND INTERNAL REVENUE TAXES.) UNQUOTE.

8. REQUEST GUIDANCE ON ACCEPTANCE, TO WHICH WE SEE NO OBJECTION, OF PHIL QUOTE CUSTOMS DUTIES, TAXES AND OTHER CHARGES UNQUOTE IN LIEU OF OUR LIST OF TAX EXEMPTIONS IN CONFIDENTIAL

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THIS PARAGRAPH. PHIL LANGUAGE APPEARS TO BE AT LEAST AS INCLUSIVE AS OUR OWN.

9. CONTINGENT UPON PHIL DEMONSTRATION OF GREATER FLEXIBILITY IN SUBPARAGRAPH (1), WE PROPOSE ACCEPTANCE OF RP LANGUAGE QUOTE REASONABLE QUANTITIES OF UNQUOTE. REASONABLE QUANTITIES LANGUAGE IS FOUND IN OTHER SOFA PROVISIONS AS WELL AS IN US DRAFT ARTICLE X 5A(2) APPLYING TO IMPORTATIONS FOLLOWING FIRST ARRIVAL. ARTICLE XIII (3) OF 1947 MBA CONTAINS LIMITATION ON IMPORTATION OF PERSONAL PROPERTY TO THAT WHICH IS FOR QUOTE OWN USE UNQUOTE. IT SEEMS IMPLICIT IN THE GRANT OF TAX FREE IMPORTATION THAT THE PRIVILEGE OR RIGHT BE EXERCISED REASONABLY. ACCEPTANCE OF THE WORDING IN THIS CONTEXT SHOULD CAUSE NO MORE DIFFICULTY THAN IT DOES ELSEWHERE.

10. PHILS HAVE REJECTED PARAGRAPH 5A(2) OF ARTICLE X DEALING WITH TAX EXEMPTIONS ON PROPERTY ACQUIRED FROM EXCHANGES PENDING RESOLUTION OF US DRAFT ARTICLE XIX ON SALES AND SERVICES. PHILS ALSO REJECT PARAGRAPH 5C DEALING WITH EXEMPTIONS FOR LIMITED CLASS OF LOCALLY HIRED PERSONNEL. THE ACCEPT 5B ON ESTABLISHMENT OF LIMITATIONS AND PROCEDURES TO PRECLUDE ABUSE OF TAX EXEMPTION PRIVILEGES.

11. PHILS HAVE PROPOSED A NEW PARAGRAPH 5D ON WHICH WE

HAVE TENTATIVE AGREEMENT AS REFLECTED IN THE FOLLOWING:

QUOTE: 5D. PROPERTY IMPORTED INTO THE PHILIPPINES FREE FROM ALL TAXES, DUTIES AND OTHER CHARGES MAY NOT, WHILE IN THE PHILIPPINES BE TRANSFERRED, LENT, SOLD, DONATED, CEDED, LEASED OR MORTGAGED TO PERSONS OR ENTITIES IN THE PHILIPPINES WITHOUT THE PAYMENT OF TAXES, DUTIES AND OTHER CHARGES, UNLESS THE TRANSFEREE (US: ALSO ENJOYS PRIVILEGES OF TAX EXEMPTION UNDER THIS ARTICLE OR COMPARABLE PRIVILEGES.) (RP: IN ANY CASE, IS A PERSON ENJOYING THE TAX EXEMPTION PRIVILEGE TO IMPORT UNDER THE PROVISIONS OF THIS .) UNQUOTE.

12. LANGUAGE OF 5D DRAWN FROM SPANISH PROVISION AND OUR OWN INTERNAL REGULATIONS. WE SEE NO DIFFICULTY IN ACCEPTANCE OF THIS ARTICLE EXCEPT THAT AS PROPOSED IT MIGHT CAUSE DIFFICULTIES IN THE AREA OF CHARITABLE DONATIONS. ACCOR-
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DINGLY, WE ARE PROPOSING AN INTRODUCTORY CLAUSE WHICH READS
QUOTE EXCEPT AS MAY BE APPROVED BY APPROPRIATE PHILIPPINE AUTHORITIES, UNQUOTE.

13. EARLY COMMENTS WOULD BE APPRECIATED.
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